

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTONIO M. MCINTOSH,

Plaintiff,

vs.

Case No. 07-CV-12969
HON. GEORGE CARAM STEEH

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

ORDER SUSTAINING PLAINTIFF'S OBJECTIONS (#12)
AND DENYING DEFENDANT'S MOTION TO DISMISS (#6)

Magistrate Judge Mona Majzoub issued a February 22, 2008 Report and Recommendation recommending that defendant Commissioner's motion to dismiss based on the expiration of the statute of limitations be granted. On May 1, 2008, the court took plaintiff Antonio McIntosh's timely objections under advisement, and granted McIntosh leave to file affidavits supplementing his objection that his complaint was timely received by the Clerk of the Court for filing on July 16, 2007, at 9:34 a.m., by "H. WHITE," consistent with a Federal Express tracking sheet and the judicially noticed fact that Harold White is employed by the United States District Court for the Eastern District of Michigan to accept deliveries for deposit with the Clerk's Office. May 1, 2008 Order, at 3-4. This court noted that "[i]f a complaint is mailed to the court for filing, 'filing' is accomplished when the complaint is actually received by the clerk or placed in the clerk's post office box." *Id* at 3 (citing Torras Herreria y Construcciones, S.A. v. M/V Timur Star, 803 F.2d 215, 216 (6th Cir. 1986) (citing Fed.R.Civ.P. 5(e) and Lee v. Dallas County Bd. of Education, 578 F.2d 1177, 1178-79 (5th Cir. 1978))). On May 20, 2008, plaintiff McIntosh filed the affidavit of

Jennifer Danish, who attests to her personal knowledge of the facts surrounding the Federal Express overnight delivery of the complaint, summonses, and a cover letter to the address for the Clerk of the Court for the Eastern District of Michigan. Pursuant to the court's analysis set forth in the May 1, 2008 Order and the supplemental attestations of Danish, the court concludes that McIntosh's complaint was timely filed with the court on July 16, 2007. Accordingly,

Defendant Commissioner's motion to dismiss based on the expiration of the statute of limitations is hereby DENIED.

SO ORDERED.

Dated: May 27, 2008

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
May 27, 2008, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk